

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #11	CCRB Case #: 202002737	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 04/09/2020 10:30 PM, Thursday, 04/09/2020 10:45 PM	Location of Incident: § 87(2)(b) and the 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 10/9/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 04/10/2020 1:13 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/16/2020 11:29 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Paul Negersmith	04523	945263	044 PCT
2. POM Andrew Alvarado	23931	962919	044 PCT
3. POM Adam Keegan	03588	959722	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Alvarado	Abuse: At § 87(2)(b) in the Bronx, Police Officer Andrew Alvarado interfered with § 87(2)(b)'s use of a recording device.	
B.SGT Paul Negersmith	Force: At § 87(2)(b) in the Bronx, Sergeant Paul Negersmith used physical force against § 87(2)(b).	
C.POM Andrew Alvarado	Force: At § 87(2)(b) in the Bronx, Police Officer Andrew Alvarado used physical force against § 87(2)(b).	
D.POM Andrew Alvarado	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Andrew Alvarado spoke discourteously to an individual.	
E.SGT Paul Negersmith	Force: At § 87(2)(b) in the Bronx, Sergeant Paul Negersmith used physical force against an individual.	
F.SGT Paul Negersmith	Abuse: At § 87(2)(b) in the Bronx, Sergeant Paul Negersmith seized § 87(2)(b)'s property.	
G.POM Andrew Alvarado	Discourtesy: At the 44th Precinct stationhouse, Police Officer Andrew Alvarado spoke discourteously to § 87(2)(b).	
H.SGT Paul Negersmith	Abuse: At the 44th Precinct stationhouse, Sergeant Paul Negersmith searched the vehicle in which § 87(2)(b) was an occupant.	
I.POM Andrew Alvarado	Abuse: At the 44th Precinct stationhouse, Police Officer Andrew Alvarado did not obtain medical treatment for § 87(2)(b).	
J.POM Adam Keegan	Abuse: At the 44th Precinct stationhouse, Police Officer Adam Keegan did not obtain medical treatment for § 87(2)(b).	
K.POM Andrew Alvarado	Abuse: At the 44th Precinct stationhouse, Police Officer Andrew Alvarado failed to provide § 87(2)(b) with a business card.	

Officer(s)	Allegation	Investigator Recommendation
L.POM Adam Keegan	Abuse: At the 44th Precinct stationhouse, Police Officer Adam Keegan failed to provide § 87(2)(b) with a business card.	

Case Summary

On April 10, 2020, Sgt. Paul Negersmith of the 44th Precinct, filed this complaint with IAB by phone on behalf of § 87(2)(b). It was received at the CCRB on April 16, 2020, under IAB log § 87(2)(b).

On April 9, 2020, at approximately 10:30 p.m., in the vicinity of § 87(2)(b) in the Bronx, § 87(2)(b) double parked his vehicle, exited, and approached the deli at that location. PO Andrew Alvarado and PO Adam Keegan of the 44th Precinct walked up behind him and instructed him to return to his vehicle. § 87(2)(b) allegedly told the officers that he was going to start recording on his cellphone, then PO Alvarado grabbed § 87(2)(b)'s phone and began to escort § 87(2)(b) back to the vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Alvarado and PO Keegan escorted § 87(2)(b) to the street and Sgt. Negersmith took over for PO Keegan. PO Alvarado and Sgt. Negersmith brought § 87(2)(b) to the back of his vehicle. § 87(2)(b) turned suddenly to face PO Alvarado, and PO Alvarado and Sgt. Negersmith brought § 87(2)(b) to the ground (**Allegations B and C: Force**, § 87(2)(g)). PO Keegan walked over and assisted with handcuffing § 87(2)(b).

An unidentified bystander observed the arrest and walked into the street. PO Alvarado told the individual to "Get on the fucking sidewalk," (**Allegation D: Discourtesy**, § 87(2)(g)). Sgt. Negersmith instructed the individual to get off the sidewalk and then walked over and pushed him onto the sidewalk (**Allegation E: Force**, § 87(2)(g)). § 87(2)(b) was placed into the police vehicle and Sgt. Negersmith instructed PO Alvarado to transport § 87(2)(b)'s vehicle to the 44th Precinct stationhouse (**Allegation F: Abuse of Authority**, § 87(2)(g)).

At approximately 10:45 p.m., at the 44th Precinct stationhouse in the Bronx, PO Keegan, PO Alvarado, and Sgt. Negersmith brought § 87(2)(b) to the desk area. § 87(2)(b) fell to the ground on his own and PO Alvarado and PO Keegan helped him into a chair. PO Alvarado stated, "There you go, bro, a chair like you're in fucking kindergarten" (**Allegation G: Discourtesy**, § 87(2)(g)). § 87(2)(b) was then placed in the holding cell area.

Per Sgt. Negersmith's instructions, PO Alvarado and PO Keegan went outside and searched § 87(2)(b)'s vehicle in the 44th Precinct stationhouse parking lot (**Allegation H: Abuse of Authority**, § 87(2)(g)). Before he was released, § 87(2)(b) allegedly asked PO Alvarado and PO Keegan for medical attention and for their business cards (**Allegations I, J, K, and L: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was released with three summonses for failure to stop at a stop sign, double parking, and disorderly conduct.

The investigation obtained five cellphone videos from § 87(2)(b) depicting the surveillance footage from the store located at § 87(2)(b) in the Bronx (**BR 01, BR 02, BR 03, BR 04, and BR 05; videos, BR 06; summaries**) and five body-worn camera videos (**BR 07, BR 08, BR 09, BR 10, and BR 11; videos, BR 12, BR 13, BR 14, BR 15, and BR 16; summaries**).

Findings and Recommendations

Allegation (A) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Andrew Alvarado interfered with § 87(2)(b)'s use of a recording device.

Allegation (B) Force: At § 87(2)(b) in the Bronx, Sergeant Paul Negersmith used physical force against § 87(2)(b).

Allegation (C) Force: At § 87(2)(b) in the Bronx, Police Officer Andrew Alvarado used physical force against § 87(2)(b).

Allegation (F) Abuse of Authority: At § 87(2)(b) in the Bronx, Sergeant Paul Negersmith seized § 87(2)(b)'s property.

It was undisputed that § 87(2)(b) double parked his vehicle and then walked away from PO Alvarado, PO Keegan, and Sgt. Negersmith's vehicle which had emergency lights engaged.

§ 87(2)(b) stated (**BR 17**) that he was parked in the vicinity of § 87(2)(b) in the Bronx inside of his grandmother's red Jeep. § 87(2)(b) then drove

on Sheridan Avenue to a deli located on East 172nd Street. § 87(2)(b) double parked in front of the store and exited the vehicle. § 87(2)(b) heard an officer yell, “Yo, yo, yo,” and initially did not realize the officer was speaking to him. § 87(2)(b) then observed two officers, PO Alvarado and PO Keegan, running toward him. The officers instructed § 87(2)(b) to go back to his vehicle. § 87(2)(b) asked why, and the officers did not provide a reason. The officers had arrived in a black, unmarked vehicle.

§ 87(2)(b) told the officers that he was going to start recording on his cellphone, then an officer grabbed § 87(2)(b)'s arm, placed it behind his back, and brought him to the back of his vehicle. A third officer, Sgt. Negersmith, was looking inside of § 87(2)(b)'s vehicle. § 87(2)(b) was then taken to the ground, and he felt an officer's knee on his face. § 87(2)(b) began saying, “I’m sorry,” but he was not sure why he was apologizing. § 87(2)(b) then blacked out. § 87(2)(b) was unable to distinguish which officer performed which action.

PO Alvarado stated (**BR 18**) that he, PO Keegan, and Sgt. Negersmith were in the vicinity of East 172 Street and Sheridan Avenue in the Bronx investigating a report of shots fired. The shots fired radio run was reported via 911 and no descriptions were provided. PO Alvarado observed § 87(2)(b) enter a vehicle and leave the vicinity of the area where the shots were fired. As § 87(2)(b) left, he disobeyed a stop sign at East 172 Street and Sheridan Avenue, made a right-hand turn, then double parked. PO Alvarado, PO Keegan, and Sgt. Negersmith activated their emergency lights and sirens as soon as they saw § 87(2)(b) double park. PO Alvarado, PO Keegan, and Sgt. Negersmith wanted to make sure that § 87(2)(b) was not involved in the shots fired incident in addition to the traffic violations.

§ 87(2)(b) exited his vehicle and left it on. PO Alvarado, PO Keegan, and Sgt. Negersmith identified themselves as NYPD and PO Alvarado's shield was displayed. PO Alvarado verbally instructed § 87(2)(b) to return to the vehicle two to three times. To conduct the vehicle stop, PO Alvarado guided § 87(2)(b) to the rear of the vehicle by placing both hands on § 87(2)(b)'s arm and walking with him. No other officer assisted in guiding § 87(2)(b) to the back of his vehicle. PO Alvarado did not know where PO Keegan and Sgt. Negersmith were while he was guiding § 87(2)(b) back to the vehicle. PO Alvarado was not sure whether § 87(2)(b) was holding his cellphone when he approached him.

After guiding him to the back of the vehicle, § 87(2)(b) tensed up and put both hands in a fist motion. For officer safety and § 87(2)(b)'s safety, PO Alvarado guided § 87(2)(b) to the ground. PO Alvarado did not know if PO Keegan or Sgt. Negersmith assisted in guiding § 87(2)(b) to the ground. § 87(2)(b)'s torso made contact with the ground. PO Alvarado did not see whether § 87(2)(b)'s face made contact with the ground. PO Alvarado did not recall § 87(2)(b) making complaints of pain.

On the ground, § 87(2)(b) was aggressive and not giving his hands. PO Alvarado had to place § 87(2)(b)'s hands behind his back. Either PO Keegan or Sgt. Negersmith assisted but he did not recall who. PO Alvarado did not recall holding § 87(2)(b)'s body down against the ground, just holding his arms to the ground. No one put their knee on § 87(2)(b)'s head or face. PO Alvarado handcuffed § 87(2)(b) and then he went limp and was passively resisting. § 87(2)(b) did not appear to be under the influence of any substance or alcohol. It appeared that § 87(2)(b) went limp on purpose. Prior to this, § 87(2)(b) had been speaking to the officers in a normal manner.

PO Alvarado and either PO Keegan or Sgt. Negersmith had to place § 87(2)(b) in the back of the police vehicle because he was going limp. PO Alvarado did not observe any injuries on § 87(2)(b) including to his mouth or teeth. The intention on scene was to bring § 87(2)(b) to the stationhouse for officer safety and for § 87(2)(b)'s safety. PO Alvarado transported § 87(2)(b)'s vehicle back to the 44th Precinct stationhouse.

PO Keegan stated (**BR 19**) that he, PO Alvarado, and Sgt. Negersmith responded to a radio run for either a male shot or shots fired on Sheridan Avenue in the Bronx. PO Keegan was driving but he did not remember where PO Alvarado and Sgt. Negersmith were situated. As they

approached the scene, they saw a vehicle taking off at a “pretty good rate.” PO Keegan did not remember how fast the vehicle was moving or whether it was going above the speed limit. PO Keegan did not remember whether they approached Sheridan Avenue with their lights and sirens engaged.

PO Keegan, PO Alvarado, and Sgt. Negersmith started following the vehicle, driven by § 87(2)(b) who ran at least one stop sign. PO Keegan, PO Alvarado, and Sgt. Negersmith put on their lights and sirens to try to pull § 87(2)(b) over and he went several blocks before stopping. § 87(2)(b) did not appear as if he was going to comply with being pulled over because he did not slow down. PO Keegan did not remember whether he went over the loudspeaker to try to communicate with § 87(2)(b). There were no conditions present that would have prevented § 87(2)(b) from seeing the emergency lights or hearing the siren. § 87(2)(b) eventually stopped in front of § 87(2)(b) in the Bronx and double parked alongside parked vehicles.

PO Keegan, PO Alvarado, and Sgt. Negersmith pulled up behind § 87(2)(b) and he got out of his vehicle. PO Keegan did not remember whether § 87(2)(b) had exited his vehicle before or after he parked the police vehicle. § 87(2)(b) started walking down the block and did not look back or appear to recognize that there were police officers behind him.

PO Keegan, PO Alvarado, and Sgt. Negersmith exited their vehicle and walked quickly toward § 87(2)(b). § 87(2)(b) did not appear to be going anywhere specific rather he appeared to be walking down the sidewalk. PO Keegan approached § 87(2)(b) first on the sidewalk and said, “Sir, come back here, sir, come back here,” and walked over very close to § 87(2)(b). PO Keegan did not remember saying anything else or announcing himself as a police officer. PO Alvarado arrived within seconds.

§ 87(2)(b) was holding his cellphone in his hand, and he did not tell the officers that he wished to record. PO Keegan did not remember any officer taking § 87(2)(b)'s phone, but he stated it was possible because they do not like to have civilians holding objects in their hands while interacting with them because they can use them to hit the officers over the head. PO Keegan stated that no officer would do anything to prevent § 87(2)(b) from recording but given the gravity of the circumstances, that they responded to a gun run, that § 87(2)(b) quickly drove away from the scene, failed to stop at a stop sign, and then walked away from his vehicle, it would be common practice to prevent him from holding an object in his hand while being stopped.

PO Keegan escorted § 87(2)(b) by lightly placing a hand on his shirt and brought him back to his vehicle to conduct the vehicle stop. § 87(2)(b) tensed up as if he did not want to walk back to the vehicle. § 87(2)(b)'s overall demeanor also reflected that he did not want to walk voluntarily with the officers. PO Keegan did not remember § 87(2)(b) saying anything and did not remember what he said to § 87(2)(b). PO Keegan went to look in the window of § 87(2)(b)'s driver's seat for potential weapons and Sgt. Negersmith and PO Alvarado brought § 87(2)(b) to the back of his vehicle.

While PO Keegan was looking in the window of § 87(2)(b)'s vehicle, he heard something to the effect of “Don’t ever tense up to a police officer,” or, “you don’t square up to a police officer,” but he did not know whether PO Alvarado or Sgt. Negersmith said it. PO Keegan saw § 87(2)(b) either already on the ground or nearly getting taken to the ground but he did not get a good look at it because he had been looking through the window of § 87(2)(b)'s vehicle. PO Keegan did not know whether PO Alvarado, Sgt. Negersmith, or both took § 87(2)(b) to the ground. § 87(2)(b) was on his stomach on the ground and PO Keegan did not see § 87(2)(b)'s head make impact with the ground. PO Keegan never saw PO Alvarado or Sgt. Negersmith place a knee on § 87(2)(b)'s head or upper body.

PO Keegan quickly walked over and put handcuffs on § 87(2)(b). PO Alvarado likely assisted in handcuffing by holding § 87(2)(b)'s hands behind his back. § 87(2)(b) did not cause any issues when he was on the ground. PO Keegan did not know what Sgt. Negersmith was doing. PO Keegan, PO Alvarado, and Sgt. Negersmith stood § 87(2)(b) up. Initially, there were no issues bringing § 87(2)(b) to the police vehicle. PO Keegan did not recall § 87(2)(b) or any

of the officers making any statements. PO Keegan did not observe any injuries on § 87(2)(b) PO Keegan never observed any officer perform any actions that would have damaged § 87(2)(b)'s teeth.

When PO Keegan went to put § 87(2)(b) into the vehicle, he began passively resisting by allowing his body to go limp. PO Keegan had an arm on § 87(2)(b) to hold him up. PO Keegan did not recall § 87(2)(b) fainting or losing consciousness. When § 87(2)(b) let himself go limp, he protected his body in a way that he would not let his head hit the ground, which indicated that he was conscious, and alert opposed to fainting or going unconscious. PO Keegan further explained that if § 87(2)(b) had lost consciousness, he would have had to hold up § 87(2)(b)'s entire body weight rather than § 87(2)(b) just going limp. It did not appear that § 87(2)(b) needed medical attention.

Sgt. Negersmith stated (**BR 20**) that a report of shots fired came over the radio on Marcy Place and Grand Concourse in the Bronx. Sgt. Negersmith, PO Keegan, and PO Alvarado travelled a couple of blocks southbound on Grand Concourse to get to the location of the radio run. The area was mostly empty. Within seconds of arriving, Sgt. Negersmith observed § 87(2)(b) entering his vehicle, a red SUV, and rapidly drive northbound on Grand Concourse. There were no factors that raised Sgt. Negersmith's level of suspicion that § 87(2)(b) was armed.

Sgt. Negersmith, PO Keegan, and PO Alvarado made a U-Turn to drive north bound on Grand Concourse and pass by Marcy Place. § 87(2)(b) was then observed making a right hand turn on 171st Street. § 87(2)(b) then ran a stop sign making a left-hand turn going north bound on Sheridan Avenue. Sgt. Negersmith, PO Keegan, and PO Alvarado were going to make a lawful vehicle stop so they made a left to go onto Sheridan Avenue. Sgt. Negersmith did not observe any behavior associated with firearms. § 87(2)(b) was traveling at a high rate of speed and was already on East 172nd Street. Sgt. Negersmith, PO Keegan, and PO Alvarado made a right turn onto East 172nd Street and engaged their emergency lights. § 87(2)(b) was double parked in front of § 87(2)(b) when Sgt. Negersmith, PO Keegan, and PO Alvarado caught up to him.

§ 87(2)(b) exited the driver's seat of the vehicle, looked back at the officers, and walked across the street. Sgt. Negersmith believed the emergency lights were on when he, PO Keegan, and PO Alvarado pulled up and PO Keegan and PO Alvarado approached § 87(2)(b) Sgt. Negersmith did not observe PO Alvarado reach for § 87(2)(b)'s cellphone. Sgt. Negersmith walked up to the passenger side of the vehicle with his flashlight to make sure there was no one else in the vehicle. There was nothing suspicious inside of the vehicle. Sgt. Negersmith then approached § 87(2)(b) and escorted him back to his vehicle so they could conduct an investigation into the vehicle stop, get his information, and driver's license. Sgt. Negersmith made contact with § 87(2)(b)'s hand, but he did not recall which one. Sgt. Negersmith did not recall if PO Alvarado or PO Keegan were making physical contact with § 87(2)(b).

§ 87(2)(b) did not want to go back to the vehicle and was asking why he had to. As soon as they got to the vehicle, § 87(2)(b) became combative and tensed up. § 87(2)(b) ripped his hands out of Sgt. Negersmith's grip, went to turn around, and got into a fighting stance by making two fists in front of his mid torso. Sgt. Negersmith then took him to the ground by grabbing his shirt and pulling him down to take control of § 87(2)(b) because he did not want him to throw fists. Sgt. Negersmith did not recall whether PO Keegan and PO Alvarado assisted in taking § 87(2)(b) to the ground but they did assist in rear-handcuffing § 87(2)(b) § 87(2)(b) was flailing his arms and PO Keegan and PO Alvarado assisted by placing his arms behind his back. § 87(2)(b)'s upper body made contact with the ground, and he was possibly on his side. Sgt. Negersmith did not see § 87(2)(b)'s face hit the ground. Neither Sgt. Negersmith, PO Keegan, nor PO Alvarado placed a knee on § 87(2)(b)'s face.

§ 87(2)(b) was tensing up and passively resisting. He was also going limp and did not want to walk. Sgt. Negersmith believed § 87(2)(b) was not having a medical emergency because nothing happened where an injury would have occurred. Sgt. Negersmith did not have a medical

background, but he has had experience with passive resistance. Sgt. Negersmith did not observe any injuries and did not recall § 87(2)(b) making complaints of pain. Sgt. Negersmith did not observe any damage to § 87(2)(b)'s teeth.

Sgt. Negersmith, PO Keegan, and PO Alvarado placed § 87(2)(b) in the back of the police vehicle. Sgt. Negersmith and PO Keegan drove § 87(2)(b) to the 44th Precinct stationhouse. Sgt. Negersmith instructed PO Alvarado to transport § 87(2)(b)'s vehicle to the stationhouse. Sgt. Negersmith wanted to return to the stationhouse to issue § 87(2)(b) summonses for everyone's safety. During the transportation, Sgt. Negersmith pointed his body-worn camera at § 87(2)(b) because he felt that § 87(2)(b) was faking going limp. Sgt. Negersmith never had reason to believe § 87(2)(b) was armed.

During his interview, Sgt. Negersmith was shown his body-worn camera (**BR 11; video, BR 14; summary**) from 1:11 minutes to 2:00 minutes, during which § 87(2)(b) is taken to the ground. Sgt. Negersmith explained that when § 87(2)(b) pulled away from him, he swatted his hand away before squaring up.

§ 87(2)(b) received a summons for failing to stop at a stop sign (**BR 21**), double parking (**BR 22**), and disorderly conduct (**BR 23**).

A Threat, Resistance, and Injury report prepared by Sgt. Michael Bowman of the 44th Precinct indicated that a forcible takedown was used on § 87(2)(b) by PO Alvarado and Sgt. Negersmith to gain control of § 87(2)(b) after he had become combative (**BR 24**).

PO Alvarado's body-worn camera footage (**BR 07; video, BR 12; summary**) shows at 00:25 seconds, PO Alvarado reaches for § 87(2)(b)'s phone which is in his hand. PO Alvarado and PO Keegan escort § 87(2)(b) to the back of his vehicle. At 00:47 minutes, § 87(2)(b) turns suddenly and faces PO Alvarado causing Sgt. Negersmith and PO Alvarado to temporarily lose their grip on § 87(2)(b)'s arms. PO Alvarado grabs § 87(2)(b)'s right arm and he and Sgt. Negersmith appear to push § 87(2)(b) in the chest and § 87(2)(b) goes to the ground. PO Alvarado then turns § 87(2)(b) onto his stomach and assists PO Keegan in handcuffing § 87(2)(b).

From 3:37 minutes to 7:47 minutes, PO Alvarado transports § 87(2)(b)'s vehicle to the 44th Precinct stationhouse.

NYPD Patrol Guide procedure 221-01 (**BR 25**) states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application of force must be reasonable under the circumstance and the following should be considered in determining whether it is reasonable: The nature and severity of the crime/circumstance, actions taken by the subject, duration of the action, immediacy of perceived threat or harm to the subject, MOS, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to number of MOS, size, age, and condition of subject compared to that of the MOS, subject's violent history, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of stimulants/narcotics.

New York State Penal Code § 240.20 (**BR 26**) states that a person is guilty of disorderly conduct when with an intent to cause public inconvenience, annoyance or alarm, they engage in fighting or in violent, tumultuous or threatening behavior.

New York City Traffic Rules § 4-08 (f)(1) (**BR 27**) states that no person shall double park on the roadway side of a vehicle stopped, standing, or parked at the curb.

In *People v. Tardi*, 28 N.Y.3d 1077 (2016) (**BR 38**) the court found that officers are permitted to tow a vehicle upon a driver's arrest to situations in which such action is necessary to ensure the safety of the vehicle and its contents and where releasing the vehicle to an owner or designee is not otherwise appropriate.

§ 87(2)(g) there was no audio capturing § 87(2)(b) stating he wished to record the officers § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) PO Alvarado and Sgt. Negersmith were escorting § 87(2)(b) back to his illegally double parked vehicle, and § 87(2)(b) actively resisted by turning around suddenly in a threatening motion, thereby breaking free from PO Alvarado and Sgt. Negersmith, and there was no video evidence showing that either PO Alvarado or Sgt. Negersmith intentionally placed § 87(2)(b)

§ 87(2)(g) s face against the ground, § 87(2)(g)

§ 87(2)(g)

Allegation (D) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Andrew Alvarado spoke discourteously to § 87(2)(b).

Allegation (E) Force: At § 87(2)(b) in the Bronx, Sergeant Paul Negersmith used physical force against § 87(2)(b).

It was undisputed that a bystander walked into the street as § 87(2)(b) was being handcuffed. PO Alvarado told the bystander to “Get on the fucking sidewalk,” and Sgt. Negersmith pushed the individual onto the sidewalk.

§ 87(2)(b) never stated (BR 17) that he saw a bystander during this incident, however, § 87(2)(b) was on the ground being placed in handcuffs when this interaction occurred.

PO Alvarado initially did not recall a bystander interfering with § 87(2)(b) s arrest (BR 18). During a follow up interview (BR 28), PO Alvarado was shown his body-worn camera footage (BR 07; video, BR 12; summary) from 1:19 minutes to 1:32 minutes, during which PO Alvarado tells a bystander, who is not shown in the frame, to “Get on the fucking sidewalk.” PO Alvarado explained that he said, “Get on the fucking sidewalk,” because verbal commands were not working after multiple commands to get on the sidewalk, so PO Alvarado used a sterner tone of voice to get his point across.

Sgt. Negersmith stated (BR 20) that a bystander started to approach, so Sgt. Negersmith approached the individual and told him to get back. Sgt. Negersmith guided the bystander by straightening out his arm and making contact with the individual. Sgt. Negersmith stated that the individual was not pushed, rather he returned to the sidewalk on his own accord.

Sgt. Negersmith was shown his body-worn camera footage (BR 11; video, BR 14; summary) from 2:11 minutes to 2:30 minutes during which Sgt. Negersmith appears to push the bystander back onto the sidewalk. Sgt. Negersmith explained that he reached out his arm just to push the bystander back because he was too close to the vehicle and the officers.

NYPD Patrol Guide procedure 200-02 (BR 29) states that officers are to respect the dignity of each individual and render services with courtesy and civility.

In DAO-DCT Case Number: 2015-15012 (BR 30), the court held that an officer is not permitted to use profanity when the profanity serves no legitimate purpose but to belittle the civilian.

Patrol Guide procedure 221-01 (BR 25) states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application of force must be reasonable under the circumstance and the following should be considered in determining whether it is reasonable: The nature and severity of the crime/circumstance, actions taken by the subject, duration of the action, immediacy of perceived threat or harm to the subject, MOS, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to number of MOS, size, age, and condition of subject compared to that of the MOS, subject’s violent history, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of stimulants/narcotics.

The investigation established that the bystander was standing alone quietly in the street (a foot away from the sidewalk) observing the apprehension of § 87(2)(b) when Sgt. Negersmith asked him to return to the sidewalk. The video footage did not show him directly interfering with § 87(2)(b)'s arrest either verbally or physically when PO Alvarado took his attention away from handcuffing § 87(2)(b) to tell the bystander to "get on the fucking sidewalk." § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Discourtesy: At the 44th Precinct stationhouse, Police Officer Andrew Alvarado spoke discourteously to § 87(2)(b)

It was undisputed that PO Alvarado and PO Keegan helped § 87(2)(b) into a chair and PO Alvarado stated, "There you go, bro, a chair like you're in fucking kindergarten."

§ 87(2)(b) never stated (BR 17) that PO Alvarado spoke discourteously to him, however, the statement was captured on body-worn camera.

During his interview (BR 18), PO Alvarado was shown his body-worn camera footage (BR 07; video, BR 12; summary) from 9:56 minutes to 10:10 minutes. PO Alvarado stated he was the one who said, "like you're in fucking kindergarten" in regard to bringing § 87(2)(b) a chair. PO Alvarado explained that he was from New York City, and he was trying to get his point across since § 87(2)(b) was passively resisting and not complying.

NYPD Patrol Guide procedure 200-02 (BR 29) states that officers are to respect the dignity of each individual and render services with courtesy and civility.

In DAO-DCT Case Number: 2015-15012 (BR 30), the court held that an officer is not permitted to use profanity when the profanity serves no legitimate purpose but to belittle the civilian.

§ 87(2)(g)

Allegation (H) Abuse of Authority: At the 44th Precinct stationhouse, Sergeant Paul Negersmith searched the vehicle in which § 87(2)(b) was an occupant.

It was undisputed that PO Alvarado and PO Keegan searched § 87(2)(b) vehicle at the 44th Precinct stationhouse. Sgt. Negersmith stated that he instructed PO Alvarado and PO Keegan to do so.

§ 87(2)(b) stated (BR 17) that he realized that his vehicle had been searched because objects were moved around in the entire vehicle including the trunk.

Sgt. Negersmith stated (BR 20) he instructed PO Keegan and PO Alvarado to conduct an inventory search as a general procedure to make sure all valuables were safekept. Sgt. Negersmith did not recall if he was present for the inventory search. The inventory search was documented on body-worn camera and Sgt. Negersmith did not recall whether it was documented in a memo book or in a voucher. Sgt. Negersmith did not recall whether any valuables were taken out of the vehicle for safekeeping. Sgt. Negersmith stated that an officer may search the vehicle from bumper to bumper if they choose.

PO Alvarado stated (BR 18) that he did an inventory search of § 87(2)(b)'s vehicle to make sure there was no unwanted theft and as part of procedure of a vehicle coming into police custody. The search was captured on body-worn camera. PO Alvarado did not remember who assisted him in the inventory search. There were no property vouchers prepared and the vehicle was returned to § 87(2)(b) that day. PO Alvarado did not remember whether a supervisor instructed

him to perform the inventory search. PO Alvarado did not recall whether Sgt. Negersmith assisted in the vehicle search.

PO Keegan stated (BR 19) that he did not remember searching § 87(2)(b)'s vehicle at the stationhouse.

PO Keegan's body-worn camera footage (BR 10; video, BR 13; summary) shows, starting at 1:00 minute, PO Keegan and PO Alvarado searching § 87(2)(b)'s vehicle at the stationhouse.

In *People v. Padilla*, 21 N.Y.3d 268 (2013) (BR 31) the court found that an inventory search of a vehicle, following a lawful arrest of a driver of a vehicle that is required to be impounded, was permissible as the search was in accordance with police procedure, resulted in a meaningful inventory list, and the primary objective was to preserve the property of the defendant, protect the police from a claim of lost property, and protect police and others from dangerous instruments.

NYPD Patrol Guide procedure 218-13 (BR 32) states that whenever property comes into the custody of the Department, all valuables inventoried from a vehicle must be removed and invoiced in a property voucher.

§ 87(2)(g) Sgt. Negersmith stated that he instructed PO Alvarado and PO Keegan to inventory search the vehicle and neither officer prepared a voucher or meaningful inventory list § 87(2)(g)

Allegation (I) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Andrew Alvarado did not obtain medical treatment for § 87(2)(b)

Allegation (J) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Adam Keegan did not obtain medical treatment for § 87(2)(b)

Allegation (K) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Andrew Alvarado failed to provide § 87(2)(b) with a business card.

Allegation (L) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Adam Keegan failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) stated (BR 17) that he regained consciousness at the 44th Precinct stationhouse inside of the holding cell. § 87(2)(b)'s lip was bleeding, and his veneers were chipped. § 87(2)(b) also had a cut on the back of his head and was having trouble breathing. There were bruises on § 87(2)(b)'s face and knee. § 87(2)(b) requested medical treatment and PO Alvarado and PO Keegan did not call EMS. § 87(2)(b) was at the stationhouse for three to four hours.

§ 87(2)(b) was released with summonses and asked again for medical treatment and PO Alvarado and PO Keegan told him that his vehicle was outside and told him to leave. § 87(2)(b) went outside and called for an ambulance. Approximately 20 to 30 minutes later an ambulance arrived.

At an unspecified point during the incident, § 87(2)(b) requested business cards from the PO Alvarado and PO Keegan and did not receive any.

A photo provided by § 87(2)(b) which was taken on an unspecified date after the incident showed minor lacerations to the left side of § 87(2)(b)'s face and lip as well as swelling to his left cheek (BR 33).

PO Alvarado stated (BR 18) that he did not believe that § 87(2)(b) requested medical attention. § 87(2)(b) possibly mentioned medical treatment when he was leaving. PO Alvarado stated he offered medical attention to § 87(2)(b) but did not recall at which point during the process. An ambulance responded to the stationhouse. PO Alvarado did not know who called the ambulance. PO Alvarado did not recall speaking to any supervisors about § 87(2)(b) needing medical attention. PO Alvarado completed a medical treatment of prisoner form.

PO Alvarado did not recall § 87(2)(b) asking for a business card and did not know whether PO Keegan or Sgt. Negersmith gave § 87(2)(b) a business card.

PO Keegan stated (**BR 19**) that he never saw any issues with § 87(2)(b)'s physical well-being and did not remember § 87(2)(b) asking for medical treatment. A medical treatment of prisoner form was completed by PO Alvarado which led PO Keegan to believe that medical treatment was offered to § 87(2)(b). PO Keegan did not remember when medical treatment was offered to § 87(2)(b) but stated that medical treatment must have been offered because the medical treatment of prisoner form was completed.

During his interview, PO Keegan's body-worn footage (**BR 09; video, BR 16, summary**) was shown from 9:30 minutes to 10:00 minutes during which § 87(2)(b) states he needs to go to the hospital. PO Keegan did not independently recall whether he heard § 87(2)(b) ask to go to the hospital in the moment, but he did hear it while listening to the body-worn camera. PO Keegan stated that medical attention was definitely offered to § 87(2)(b) at some point in time and he must have refused because the medical treatment of prisoner form stated that § 87(2)(b) refused.

Sgt. Negersmith stated (**BR 20**) that § 87(2)(b) never asked for medical treatment and he did not observe § 87(2)(b) ask for his or PO Alvarado's or PO Keegan's business cards.

The medical treatment of prisoner form showed that § 87(2)(b) complained of dizziness and refused medical attention (**BR 34**).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - § 87(2)(b)
- Sgt. Negersmith has been a member of service for 14 years and named a subject in two additional CCRB complaints and nine allegations, none of which were substantiated.
- PO Alvarado has been a member of service for 4 years and named a subject in seven additional CCRB complaints and 24 allegations, two of which were substantiated.
 - 201900379 involved substantiated allegations of a search of premises and a discourteous word. The Board recommended Formalized Training and the NYPD imposed Instruction.
- PO Keegan has been a member of service for six years and named a subject in four additional CCRB complaints with 13 allegations, none of which were substantiated.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- On January 3, 2022, a FOIL request was submitted to the New York City Comptroller's Office to inform of any Notice of Claim, the results of which will be added to the case file upon receipt (**BR 36**).

• § 87(2)(b)

Squad: 11

Investigator: Kelly Lyon Inv. Kelly Lyon 1/12/2022
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 01/12/22
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____